

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
OCT 19 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

BONNIE G.,)	
)	
Appellant,)	2 CA-JV 2009-0034
)	DEPARTMENT A
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ARIZONA DEPARTMENT OF)	Rule 28, Rules of Civil
ECONOMIC SECURITY and)	Appellate Procedure
KARMA F.,)	
)	
Appellees.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 15889800

Honorable Suzanna S. Cuneo, Judge Pro Tempore

AFFIRMED

Child Advocacy Clinic
By Paul D. Bennett, a clinical professor appearing
under Rule 38(d), Ariz. R. Sup. Ct.

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

E S P I N O S A, Presiding Judge.

¶1 Appellant Bonnie G. appeals from the juvenile court’s order terminating her parental rights to her daughter Karma F., born in November 2008, on grounds that Bonnie was serving a sentence for a felony conviction of such length that Karma would be deprived of a normal home for a period of years, *see* A.R.S. § 8-533(B)(4), and Bonnie’s parental rights to another child, Ocean G., had been terminated within the preceding two years and she is currently unable to discharge parental responsibilities due to the same cause, *see* § 8-533(B)(10).

¶2 On appeal, Bonnie contends the evidence was insufficient to establish either of these grounds.¹ Because we conclude the court did not err in terminating Bonnie’s parental rights to Karma pursuant to § 8-533(B)(10), after finding her rights to Ocean had recently been terminated for the same cause, we do not consider Bonnie’s argument that the court erred in finding termination was warranted under § 8-533(B)(4), based on the length of Bonnie’s incarceration. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000) (if appellate court affirms termination on one ground, it need not address other grounds found by juvenile court).

¹Bonnie does not challenge the juvenile court’s additional finding that termination was in Karma’s best interests. *See* § 8-533(B) (“court shall also consider the best interests of the child” in considering grounds for termination).

¶3 Karma is Bonnie’s sixth child. The juvenile court has terminated Bonnie’s parental rights to four of her children, and none of her children is in her care. Most recently, in February 2008, the court terminated Bonnie’s parental rights to Ocean, who was born addicted to cocaine. In addition to other grounds for termination, the court found Bonnie was “unable to discharge her parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol,” with “reasonable grounds to believe that these conditions [would] continue for a prolonged indeterminate period.” *See* § 8-533(B)(3).²

¶4 In November 2008, Child Protective Services (CPS) learned Karma had been born while Bonnie was incarcerated, awaiting sentencing on her conviction for possession of cocaine and the resulting violation of previously imposed terms of probation. After Karma was discharged from the hospital,³ CPS took temporary custody of her and placed her in a foster home, and the Arizona Department of Economic Security (ADES) filed a dependency petition.

²Although properly served, Bonnie had failed to appear for the initial termination hearing related to her rights to Ocean. The juvenile court proceeded in her absence and deemed her to have admitted the facts alleged in support of termination, as authorized by Rule 65(C)(6)(c), Ariz. R. P. Juv. Ct.

³Karma had been born prematurely and placed in the neo-natal intensive care unit for several weeks after her birth.

¶5 In February 2009, Bonnie admitted the allegations in an amended petition, and the juvenile court adjudicated Karma dependent as to her.⁴ The court ordered the case plan goal changed to severance and adoption, citing “[Bonnie]’s length of incarceration, [her] prior history in this case, and [Karma]’s age.” ADES then filed a motion for termination alleging (1) Bonnie’s imprisonment, expected to continue until June 2010, would deprive Karma of a normal home for a period of years, *see* § 8-533(B)(4), and (2) Bonnie’s parental rights to another child had been terminated within the preceding two years and she was currently unable to discharge parental responsibilities due to the same cause, *see* § 8-533(B)(10). After a termination adjudication hearing, the court found ADES had established both grounds by clear and convincing evidence and had also established termination would be in Karma’s best interests.

¶6 On appeal, Bonnie argues ADES failed to prove the “same cause” prevented her from parenting both Ocean and Karma. She acknowledges her chronic substance abuse was a cause of the termination of her rights to Ocean but contends the only current disability ADES has proven is her incarceration, which was not at issue in the previous proceeding because Bonnie had not been incarcerated then. Although Bonnie admits she is now incarcerated as a direct result of her “old drug problem,” she contends this is insufficient to

⁴Bonnie correctly notes the amended petition is not included in the record on review. But “[w]e generally presume items that are necessary for our consideration of the issues but not included in the record support the court’s findings and conclusions.” *Adrian E. v. Ariz. Dep’t of Econ. Sec.*, 215 Ariz. 96, ¶ 21, 158 P.3d 225, 231 (App. 2007). Bonnie has suggested no reason we should vary that rule here.

establish “that she cannot currently parent because of the same chronic drug use.” She argues she “stopped using drugs when she learned that she was pregnant with Karma,” who “was not born drug exposed”; “has participated in all available services”; and “had been sober for [eleven] months” by the time of the March 31, 2009 termination hearing.

¶7 But there was other evidence before the juvenile court, including the report and testimony of CPS investigator Andrea Cordova, who had been assigned as the ongoing case manager for Ocean as well as the investigator for Karma. Cordova had reported in December 2008 that Bonnie admitted she (1) had smoked crack cocaine daily during the first two-and-one-half months of her pregnancy with Karma and had last used cocaine on the day of her arrest in June, (2) had begun using crack cocaine when she was fifteen and had since participated in various substance abuse programs but had not benefitted from them, and (3) had been diagnosed with bipolar disorder but did not obtain treatment consistently except when she was incarcerated. At the termination hearing, Cordova was asked whether Bonnie appeared to have resolved the issues that had resulted in termination of her rights to Ocean and responded, “No. . . . [S]he hadn’t resolved her drug issues or her homelessness or her [inability to maintain] stable employment, any of those issues—none of the issues had been resolved.”

¶8 Although Bonnie may dispute the juvenile court’s findings, the weight ascribed to the evidence presented is best determined by that court, as the trier of fact, and we “will not reweigh the evidence but will look only to determine if there is evidence to sustain the

court’s ruling.” *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, ¶ 8, 83 P.3d 43, 47 (App. 2004). In *Mary Lou C.*, Division One of this court held the mother’s incarceration for possession of illegal drugs was properly considered as evidence of grounds for termination for the “same cause” as a prior termination of her rights to another child on grounds she had neglected, refused, or failed to remedy the circumstances causing the child to remain out of home placement. See § 8-533(8)(a), (c); *Mary Lou C.*, 207 Ariz. 43, ¶¶ 7, 11-12, 83 P.3d at 47-48. Even though the court in *Mary Lou C.* had not found chronic substance abuse as a ground for the previous termination, evidence in the record suggested it had, in fact, been the cause of the mother’s inability to parent her child. *Id.* ¶¶ 7, 11-12. As the appellate court explained, we construe the reference in § 8-533(B)(10) to another recent termination “due to the same cause” to mean the underlying “factual ‘cause’ that led to the [previous] termination of . . . parental rights to [another child],” not necessarily “the statutory ground or grounds that supported that preceding severance.” *Id.* ¶ 11.

¶9 Bonnie argues ADES failed to present evidence Bonnie was “currently unable to discharge parental responsibilities” due to mental illness or chronic drug abuse. § 8-533(B)(10). She notes that Cordova’s report and testimony were based on an interview with Bonnie four months before the termination hearing, and that, in contrast to the evidence in *Mary Lou C.*, ADES had presented no expert testimony that Bonnie currently suffered from mental illness or chronic drug abuse that would probably continue beyond her incarceration. See *Mary Lou C.*, 207 Ariz. 43, ¶ 13, 83 P.3d at 48-49.

¶10 But unlike *Mary Lou C.*, the juvenile court here had found just thirteen months earlier, when terminating Bonnie’s rights to Ocean, that Bonnie’s mental illness, her chronic drug abuse, or both, prevented her from parenting and that her condition would probably continue for a prolonged, indeterminate period. By her own admissions, Bonnie continued to use crack cocaine for four months following the court’s termination order, until her drug abuse was halted by her arrest and incarceration. Based on the court’s prior findings and Bonnie’s subsequent history, expert testimony was not required to establish the nature or likely duration of Bonnie’s condition, and the court reasonably could have inferred that the lapse of time between Cordova’s interview with Bonnie and the termination hearing did not materially affect the determination of whether Bonnie was presently unable to parent Karma due to the same cause that had rendered her unable to parent Ocean.

¶11 For the foregoing reasons, we affirm the juvenile court’s termination order.

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

PETER J. ECKERSTROM, Judge